SINGLE BENCH

c. 8.1001 — (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 4515 /2005

PETITIONER : Birjita Uraon (Lakra)
W/o. Domnik Uraon
aged about 35 years,
Up-Sarpanch, Gram Panchayat
Sarabkombo, R/o. Village
Sarabkombo, Tah. Bagicha
Dist. Jaspur (C.G.)

CERTIFIED COPY
31.8.05
CLERK H.C.G. BILASPUR

VERSUS

RESPONDENTS :
1. The State of Chhattisgarh
Through : Secretary
Panchayat & Social Welfare
Department, D.K.S. Bhawan
Raipur (C.G.)
2. The Sub-Divisional Officer (R)
Cum-Presiding Officer
Bagicha, Dist. Jaspur (C.G.)
3. The Returning Officer,
Panchayat Election, Bagicha,
Sub-Engineer, Warter
Resources Department,
Kansabel, Dist. Jaspur (C.G.)
4. Suresh Jain, S/o. Nemichand
Jain, aged about 40 years
Panch, Ward No.6, Gram-
Panchayat Sarabkombo,
Bagicha, Dist. Jaspur (C.G.)

C.R. No. 4428/05
Presented by Shri A.K. Prasad
dated 31/8/05

(4)

WRIT PETITION U/A 226/227 OF THE CONSTITUTION OF INDIA

1. PARTICULARS OF

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 4515/05 ..... **सन् 200** (27)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	21.9.2005 Shri A.K. Prasad, counsel for the petitioner. Shri Sandeep Dubey, Govt. Advocate for the State. Heard on admission. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality, propriety and correctness of order dated 25.7.2005 (Annexure P-1) whereby learned Sub Divisional Officer, Bageecha (Specified Officer) ordered for recount of votes, recount was held on the same day and as a result of recount, respondent No.4 has been declared elected and the petitioner's election was set aside. Brief facts leading to filing of this writ petition are that the petitioner and respondent No.4 herein contested election for the post of Up-Sarpanch of Gram Panchayat Sarabkombo, which was held on 4.2.2005. As per the counting of votes, the petitioner herein received 9 votes, whereas, respondent No.4 herein received 8 votes and 4 votes were declared invalid and accordingly, the petitioner herein was declared as Up-Sarpanch of Gram Panchayat Sarabkombo. Dissatisfied with the result, respondent No.4 filed an election petition under Section 122 of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, notice of the same was issued to the petitioner herein and vide	

SP/F

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

impugned order the prayer for recount of votes was allowed, on the same day recount was held and respondent No.4 was declared elected.

Learned counsel for the petitioner argued that the Specified Officer has passed the impugned order without following the procedure for trial of election petition as per Rules 11 & 12 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as 'the Rules, 1995'), therefore, the order impugned is liable to be quashed.

As the order impugned passed by the Specified Officer is perverse & illegal on the face of it, therefore, notice of this petition is not being issued to respondent No.4, as the issuance of notice will unnecessarily delay the disposal of the petition. However, if respondent No.4 still feels aggrieved by this order, he will be at liberty to move this Court by filing an application for modification/recalling of this order.

I have perused the impugned order.

Learned Specified Officer after hearing counsel for the parties reached to the conclusion that since the petitioner has been elected by a margin of one vote and he is not able to reach any conclusion based on the arguments of counsel for the parties and looking to the narrow margin and in order to give finality to the dispute and to do the effective justice the recounting of votes is necessary. Ultimately, he

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(२१)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ordered for recount of votes, recounting was taken place on the same day and thereafter, respondent No.4 was declared elected.

It would be relevant to mention here the Rule 11 & Rule 12 of the Rules, 1995. Rule 11 of the Rules, 1995, envisages the procedure before the Specified Officer and his powers, which reads as under: -

> (1) Subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits:
>
> Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him.
>
> (2) The specified officer, shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:-
>
> (a) discovery and inspection;
>
> (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses;
>
> (c) compelling the production of document;
>
> (d) examination of witnesses on oath;
>
> (e) reception of evidence taken on affidavit; and

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(30)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
४६	(f) issuing commission for examination of witnesses and summoning and examining suo moto any person whose evidence, appears to him to be material. Rule 12 of the Rules, 1995, provides regarding production of witnesses by the parties. In this case when the petitioner herein disputed the averments made by respondent No.4 in the election petition in that situation the Specified Officer was required to follow the procedure as envisaged under Rules 11 & 12 of the Rules, 1995 and ought to have examined the witnesses in order to ascertain the averments made in the election petition and after hearing the arguments he ought to have decided the election petition. But, without following the procedure learned Specified Officer allowed the election petition of respondent No.4, therefore, the order impugned is perverse, illegal and same is liable to be set aside on this ground only. In the result, the petition is allowed, order dated 25.7.2005 (Annexure P-1) is hereby set aside and the Specified Officer is directed to decide the election petition after following the provisions prescribed under Rules 11 & 12 of the Rules, 1995. In view of this order, M.(W.)P.No.3658/2005 and I.A. No.8086/2005 stand disposed of. Sd/- L.C. Bhadoo Judge	